IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 48 of 1991
with
WEALTH TAX REFERENCE Nos. 69 of 1991, 111 of 1994,
91 of 1995 and 95 of 1995
(Five matters)

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RASIKLAL CHIMANLAL TRUST

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

In all the five references at the instance of the Commissioner of Wealth-tax, the controversy brought before the Court pertains to applicability of provisions of Section 21(4) of the Wealth-tax Act, 1967 in a situation where the assessee trust is having net wealth below the taxable limit.

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears on behalf of the respondent-assessee. Our attention was invited to the reported decision of this Court in CWT vs. Rekha and Dhanesh Trust, (1998) 231 CIT 805 wherein identical controversy was brought before the Court. It is held by this Court in the reported decision that : "Now, while maintaining the extent of leviability of tax from the representative assessee, all that is done is to provide a higher rate where the tax becomes payable on crossing the exemption limit. It would, therefore, be fallacious to say that the Legislature intended to take away the exemption limit which was applicable in such cases merely because the higher rate came to be prescribed by subsequent amendments. Section 21(4) is unambiguous and it clearly indicates that the wealth-tax which was not payable by an individual was also not payable by the representative assessee. Therefore, only when the wealth-tax was payable by an individual when the net wealth exceeded the exemption limit, would the question of recovering tax at a higher rate, prescribed by clause (b) of sub-section (4) of section 21, from such representative assessee, arise."

3. In view of the aforesaid finding, the questions referred to us in all the five references are answered in the affirmative i.e. in favour of the assessee and against the revenue.

4. The references accordingly stand disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-